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NEWS NOTES

OF THE CENTRAL COMMITTEE FOR CONSCIENTIOUS OBJECTORS

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Philadelphia, Pa.

Dotys Arrested Second Time

Court to Review Nugent Case

The U.S. Supreme Court has agreed to review the cases of Harry Nugent and Lester Packer. Certiorari was granted March 16. The date for argument has not been set. The cases were consolidated for appeal. Both cases are on appeal from the Second Circuit and involve the disclosure of the FBI investigative report made in the course of appeal for C.O. classification by Selective Service. The second Circuit Court of Appeals reversed the convictions of Nugent and Packer because the FBI report had not been disclosed.

February 24 the Ninth Circuit Court of Appeals affirmed the conviction of Roy Elder and ruled against the Second Circuit's opinion that the law requires disclosure of the FBI informants. The Ninth Circuit stated, "We are not able to agree that the statute either requires or contemplates the inclusion of the investigative report in the file. . . . In our opinion the disclosure thought in the Nugent case to be required by the terms of the Act would operate, not to further, but to defeat the objective of Congress."

The Third Circuit Court of Appeals has refused to rule on the Nugent point. The argument on the appeals of Bender and Borisuk which was originally set for March 2 was postponed pending the Supreme Court's decision in the Nugent and Packer cases.

Judge Dismisses Cases

Judge William C. Mathes has dismissed two prosecutions of conscientious objectors in U.S. District Court at Los Angeles after his private examination of the FBI reports. The case of Arthur Clark was dismissed March 12 and that of Russell Townsend March 19. J. B. Tietz was the defense attorney in both cases.

Judge Mathes has refused to hold up selective service violation prosecutions pending the Nugent review by the Supreme Court. He has been following the process of personally examining the FBI report to determine if it contains information of value to the defense. If he considers the file of value to the defense and the government refuses to allow disclosure of the file, he grants the government's motion to dismiss the prosecution. The government prefers to dismiss the prosecution rather than to continue and have a judgment of acquittal granted. If Judge Mathes finds nothing in the file of value to the defense he continues the prosecution with the file remaining undisclosed.

Four Brothers from Minnesota Face Repeat Trip to Prison

Joel, Orin and Paul Doty were arrested March 2 for refusal to report for induction. Sid Doty's arrest was delayed until March 6, because he was temporarily snow-bound at his home near Bruno, Minnesota. The four brothers were released on \$1,500 bond each. The arrests marked the start of the second round of prosecutions for the Dotys.

Joel was still on parole from his first conviction at the time of his second arrest, and he is past his 26th birthday, the age at which the Department of Justice has previously stopped the repeated prosecution of absolutist conscientious objectors. He is the only one of the four Dotys who is married.

Orin, Paul and Sid received 18 months sentences from Judge Dennis Donovan April 6, 1952, for refusal to register. Joel's first sentence was two years. The Dotys were all sentenced the same day in U.S. District Court at Duluth, Minnesota.

While in prison at Springfield, Mo., the Dotys went on a work strike for three months. The strike resulted in their transfer to Ashland, Ky., where they resumed work. (See NEWS NOTES July-August and September, 1952) Joel was released on parole June 1, 1952, and the other three men were given unconditional releases with their credit for "good time" the same month.

Father Also Objects

The family has a long record of determined opposition to war on a combination of religious and political grounds. William N. Doty, father of the men, was imprisoned for his refusal to participate in World War I. His present opposition to war and his support of his sons is carried on through paid newspaper advertisements, numerous letters to editors, and circulation of anti-war literature, some of which he has written and published personally.

The Dotys' present conflict with the draft law resulted from their continued refusal to cooperate with Selective Service regulations. As is customary, they were registered by prison officials, and the registrations were sent to the local board having jurisdiction at their home address. The men then received questionnaires, orders to report for physical examinations, and orders to report for induction into the army. All compliance was refused

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I-W Transfer Restricted

Some conscientious objectors on assigned civilian jobs (men classified I-W) will wish to transfer to another employer. As some have already discovered, the possibility of such a transfer of employment is extremely limited. It is the intent of Selective Service that C.O.'s shall be assigned and then remain with the original employer for the 24 consecutive months of required service.

The regulations provide for transfer of employment only if "such work ceases to be available for performance by the registrant for any reason not due to the fault of the registrant such as, but not limited to, the cessation of the work or the termination of his employment by his employer." In such case, "the registrant shall be ordered to perform the same type of work with another employer." [1660.21 (c)] This type of transfer is not considered a break in the period of service.

The failure to mention transfer for any other reason implies that transfer will not be allowed under other circumstances. However, since neither the law nor the regulations prohibit transfer for other reasons there is no reason from a legal standpoint why the Selective Service System could not administratively establish a broader transfer policy.

By administrative decision Selective Service has provided that an employer may transfer an assignee from job to job and from one address to another without seeking prior approval of Selective Service. The employer is requested only to notify the appropriate State Director of the address change. It is not necessary that the local board issue a new work order under these circumstances.

The National Headquarters of Selective Service has prepared a guide on the civilian work program for the use of State Directors. This manual, "Conscientious Objector Work Program Manual" mentions the transfer of I-W's only in reference to breaks in the service period. In one place it states, "The cover sheet of a I-W registrant who has a break in service and who is waiting for another assignment and Order to Work, will be returned to his local board for reassignment and Order to Work by his local board." Presumably, this deals with a break in service such as that contemplated in regulation 1660.23 (c) cited above.

The manual also says that, "When there is a break in service of the twenty-four (24) consecutive months caused by the misconduct of the registrant and the registrant is reordered to work by the local board, the registrant will not be given credit for his previous period of service."

Whether or not there are penalties in handling of transfers following termination of employment previous to 24 months of service will depend on the administrative decision as to whether the termination is "due to the fault of the registrant." There are no provisions for appeal from such decisions.

The draft law, of course, only states the obligation for civilian work, and the program is not spelled out. Thus we find that the law, the regulations, and the administrative manual are all silent on the possibility of an orderly transfer to a new employer without an unexpected termination of employment by the employer or the assignee.

This does not mean that it is impossible for a I-W to get a new assignment to a preferable job. The admin-

Stop Second Prosecutions

(An Editorial)

The conscientious objectors who face repeated prosecutions for their refusal to cooperate with conscription are willing to go to prison again and again.

But are you willing to let them?

The courts have failed to limit these prosecutions, but judges will continue to be pressed to halt this moral equivalent of double jeopardy. However, there is not much indication that relief will be found in the courts.

Second prosecutions can be stopped by enlightened public opinion forcing a change in Department of Justice policy. The Department of Justice does not have to prosecute every violation of law, and it obviously does not do so. Prosecutor's discretion is a wise and firmly rooted principle of American law. Under the concept of prosecutor's discretion Department of Justice officials can, as a matter of policy, prosecute or not prosecute any violation or group of violators.

Note, for instance, the flagrant violations of the laws against wire tapping which the Department of Justice does not prosecute. Note that in numerous cases where State and Federal laws are broken in the commission of the same crime the Department of Justice often does not prosecute if the state does. Even for some violations of the draft law by conscientious objectors the Department has refused to prosecute, for example, the refusal to register by well known pacifists over 45 during World War II.

As recently as February 2, Judge Ernest A. Tolin, a former U.S. Attorney, in a second prosecution case in U.S. District Court in Los Angeles declared that C.O.'s should not be prosecuted a second time. There is no question of law or fact. The Department of Justice can halt these repeated prosecutions.

Let your opinion be known. Write Herbert Brownell, Jr., the attorney general, to request that second prosecutions of conscientious objectors be halted. Attempt to interest your Senator and your Congressman. Let Washington know that you are opposed to the continuous prosecution of men of conscience.

A Negro boy with a "strange" religion has received sentences totaling 8½ years in prison. A Quaker boy received a ten-year sentence, later cut to five years leaving him with a total of six years for two sentences. A father of four children has completed his third prison term subsequent to 18 months as a civilian draftee working without pay.

These things have already happened in this country. They should be of deep concern far beyond the small group of those opposed to participation in war. These repeated prosecutions strike at the heart of our principles of religious and political freedom.

If you object to repeated prosecutions, let your protest be heard. Through the pages of history silence has always been the strongest supporter of persecution.

Lyle Tatum

Administrative decisions of Selective Service are subject to change at any time, and C.O. counseling agencies may persuade National Headquarters to broaden the policy. It is also possible that in some cases either the local board or a State Director may be convinced that a transfer is warranted, and such a transfer will then be made.

Courage in Both Hands

The Fellowship of Reconciliation has published a new, attractive edition of *Courage in Both Hands* (50c, paper-bound, \$1.50 cloth, F.O.R., 21 Audubon Ave., N. Y.). These true stories of the use of non-violence in conflict situations were collected and edited by Allan A. Hunter and originally published under the title, *Heroes of Goodwill*.

Here we find pacifism put to the test of harsh realities that "practical" persons feel only violence can solve. Pacifists in the reports face rattle snakes, enemy soldiers, gestapo agents, robbers, savages, a chain gang captain, and a firing squad. In one story the age-old question of protecting wives and daughters changes from theory to fact. We especially appreciate it that these are not just sentimental tales of "good deeds in a naughty world." In some of the cases the pacifists do not survive.

In the pages of this book we meet well known persons such as Gandhi, Wilhelm Mensching, and Kagawa. We also hear for the first time of unknown heroic persons from all over the world. Soldiers, animal trainers, coal miners, school teachers, social workers, sailors, doctors and many other occupations have their representatives in these stories.

Here are short, exciting incidents of faith and courage meeting danger. All ages enjoy the stories, but they are especially effective with young people. This book is a favorite of ours which we hope will be widely distributed.

Israel Feurer Convicted

Israel Feurer, Reed College student, was found guilty of refusal to submit to induction and given a six months sentence by Judge Claude McColloch in U.S. District Court in San Diego, California, February 26. Feurer refused to check on Form 150 whether or not he believes in a Supreme Being.

Judge McColloch is an Oregon district judge. He tried the Feurer case because the regular judge, Jacob Weinberger, disqualified himself as an old family friend of the defendant.

Feurer is free on bond while an appeal is pending. The defense attorney is Byron S. Lindsley of San Diego.

Primbsch Granted I-O

Bernard Primbsch, a Catholic C.O. from Sonoma, California, served an 18 months prison sentence at McNeil Island, Washington, for refusal to submit to induction. He registered for the draft and requested C.O. classification, but he was classified I-A, although he had been raised as a pacifist.

Primbsch was denied parole. He was released on good time September 23, 1952. The local draft board then reclassified him I-A. He requested a personal appearance before the board. After holding the hearing, the board has now reclassified Primbsch I-O.

Legislature Votes I-A-O Bonus

By a vote of 63-28 the Indiana House of Representatives has approved extending the state World War II veterans' bonus to I-A-O conscientious objectors. 344 applications from I-A-O men were rejected previously under the terms of the Indiana law as originally passed.

The author of the bill made it clear that the bonus would not be extended to include C.O.'s who served time in Civilian Public Service Camps. During discussion of the proposed change an Air Corps veteran pointed out that "a man who will go into combat without a gun is a lot braver than a man who goes in with a gun." A number of I-A-O's served in combat areas as medics during World War II. Conscientious objectors are also on duty in Korea at the present time.

The average bonus payment in Indiana is more than \$300. Under the federal G.I. law and most state bonus laws, I-A-O's receive all benefits without discrimination.

DOTYS ARRESTED

(Continued from page 1)

by the Dotys because of their conscientious objection to cooperation with conscription. They plan to plead not guilty and defend their cases in court. The time schedule for the prosecution has not yet been determined.

Seven Cases Pending

The arrest of the Dotys raises the number of second prosecutions now pending to seven. The other three cases are all in the Philadelphia area. The defendants in Philadelphia are Paul and David Seaver, Haverford College students, and Vail Palmer, CCCO administrative assistant.

Thirteen other second prosecutions were started since the 1948 draft law went into effect. Nine of these in Iowa were dismissed by the two District Courts involved when the U.S. Attorneys cooperated with the defense attorney to obtain selective service deferments for the men. The four remaining cases resulted in convictions. Three of the four men served a second prison term, and one was placed on probation.

1940 Draft Law Involved

In some cases for which CCCO does not have complete records, conscientious objectors have been sentenced under the 1940 draft law and again under the present law. Some of these men are serving long sentences for their religious views. Many Muslims, a group which has had little understanding from the courts, the general public, or even other objectors, refuse to register for the draft on religious grounds. One of their men, James McGregor, was sentenced March 9 in Baltimore to 4½ years in prison for his refusal to register. McGregor served a four-year sentence during World War II on the same charge.

Selective Service records show that 203 conscientious objectors were convicted a second time during World War II, and two men had three convictions. Although to the average citizen this looks like repeated prosecution for the same "crime" in violation of the Constitutional prohibition against double jeopardy, the courts have held, to date, that each conviction is for a separate offense.

THE COURT REPORTER

I PROSECUTIONS

Sentenced since last issue

- 2-16-53 Robert McCorkle, 3½ yrs., (San Francisco, Cal.) Judge Dal Lemmon
- 2-26-53 Israel Feurer, 6 months, (San Diego, Cal.) Judge Claude McColloch (Feurer is free on bond while an appeal is pending.)
- 2-26-53 Martin Mayden, 1½ yrs., (San Francisco, Cal.) Judge Louis Goodman
- 2-26-53 Ernest Holmes, 1½ yrs., (San Francisco, Cal.) Judge Louis Goodman
- 2-26-53 Janney Wilson, 3 yrs., (Alexandria, Va.) Judge Albert Bryan (Wilson started serving sentence 2-28-53.)

Acquittal

- 3-4-53 Lawrence I. Tuttle, Jr. (Los Angeles, Cal.) Judge Leon Yankwich

Appeals

- 2-24-53 Roy Elder, Conviction affirmed, 9th Circuit Court of Appeals
- 3-9-53 Ted Head, Certiorari denied, U.S. Supreme Court
- 3-9-53 Robert Tyrell, Certiorari denied, U.S. Supreme Court
- 3-16-53 Harry Nugent, Certiorari granted, U.S. Supreme Court
- 3-16-53 Lester Packer, Certiorari granted, U.S. Supreme Court

Arrests since last issue

- Indiana—Charles Wenger, Jr.
- Minnesota—Joel Doty, Orin Doty, Sid Doty, Paul Doty
- New Jersey—Burton Babb
- New York—Edward Essner
- (All prosecutions for refusal to report for or submit to induction unless otherwise noted.)

II RELEASED FROM PRISON

On parole

- 2- -53 Donald Koch
- 2- -53 Howard Harris

III MEN CURRENTLY IMPRISONED

- Ashland, Ky.—Clifford Walter, Don Begeman, Edwin White

Room 300
2006 Walnut Street
Philadelphia 3, Pa.

Tuttle Acquitted

Lawrence I. Tuttle, Jr., Methodist C.O. was acquitted March 4 in U.S. District Court at Los Angeles by Judge Leon R. Yankwich.

Tuttle had been classified I-O, but he appealed for a IV-D when he became a pre-divinity student. The appeal board reclassified him I-A, and he was subsequently ordered to report for induction into the armed forces. The U.S. Attorney argued that Tuttle appealed from the I-O, so he must take the hazards of an appeal.

Judge Yankwich made a lengthy statement from the bench, commenting on the points raised by defense attorney J. B. Tietz, but he stated that his decision "was on general principles, just as a jury may do."

- Chillicothe, Ohio—Carlton Owen
 - Danbury, Conn.—Wilbert Wilson, Paul Zimmerman, James Wenger, Stephen Barragato, Marvin Katz, Sten Klinteberg, Ray Arvio
 - La Tuna, Tex.—Jack Jenewin
 - Milan, Mich.—Robert Suydam, Richard Smith
 - Mill Point, W. Va.—Loy Imboden, M-H-Rambo, George Ibasfalean
 - McNeil Island, Wash.—James MacDonald, Richard Barrett, Hubert Barnes, George Waegell, Glenn Peters, Clarence Bryan
 - Petersburg, Va.—Larry Atkins, Gordon Oehser, Vasyl Sereda, Philip Mulligan, Janney Wilson
 - Springfield, Mo.—Robert Beach, Willie Rogers, Grady Rodgers, Robert Starkweather
 - Tallahassee, Fla.—Frank Laraway
 - Tucson, Ariz.—Rudy Linan, Roy Elder, Fred Hildebrand, Elden Taylor, Gaetano Brancalone
 - Tulelake, Cal.—Frank Broderick, Emmett Blincoe, Harold Gilmore
 - Wickenburg, Ariz.—Dan Talmachoff
 - Institution not verified—Robert McCorkle, Martin Mayden, Ernest Holmes, *Franklin, Arroyo, Long*
- Total number of C.O.'s convicted since 1948 to date: 194 (This is a minimum number, since J.W.'s and Muslims are not included, and we miss a few.)

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